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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,970	07/03/2003	Juan Aguirre JR.	P02699	6782

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STONEMAN LAW OFFICES, LTD
3113 NORTH 3RD STREET
PHOENIX, AZ 85012

EXAMINER

LEV, BRUCE ALLEN

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,970

Applicant(s)

AGUIRRE ET AL.

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

BRUCE A. LEV
PRIMARY EXAMINER

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claims 1 and 18, the “stower” is not set forth as being attached to the other structural members. Each element of the invention must be interrelated and positively set forth. As is, the blocker and attacher are attached with a stower “floating” in space.

As concerns claims 1, 5, 9, and 18-20, the phrase “overhead-type door” is vague and indefinite and should read “overhead door”.

As concerns claim 7, the phrase “the at least one rolled position” lacks antecedent basis, therefore rendering the claim as vague and indefinite.

As concerns claim 9, there is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. For example, the preamble clearly indicates that the subcombination of a “shading system” is being claimed with the functional recitation of the “shading system” being used “for shading...a building...opening...serviced by...overhead-type door”. However, the body of the claim positively recites the “overhead-type door”, e.g., “support bracket mechanically *fastened to* the... overhead-type access door”, which indicates the claims as being drawn to a combination of the “shading system” and the “frame”. Therefore, the applicant is required to clarify what

the claims are intended to be drawn to, i.e., either the “shading system” alone or in combination with the “overhead-type door”, and to present the claims with the language which is consistent with the invention. The applicant should note that “*adapted to be*” language may be appropriate if claiming the “shading system” alone (i.e., “adapted to be secured to”).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7-11, 14, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by ***Lindley, Jr. 5,915,443***.

Lindley, Jr. sets forth a shading system (best illustrated in Figures 1-3) comprising a flexible fabric blocker 22; an attacher (inclusive of members 33-35); a stower 15 including a rolling lifter 25, a retainer, a tube; a spring tensioner (inclusive of members 27); a friction retainer (viewed as inclusive of the friction between the frame and sash members); a wind load reliever (viewed as the holes in the screening material); and an access door (viewed as inclusive of members 11 and 12).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over ***Lindley, Jr. in view of Saulters 5,427,169.***

Lindley, Jr. sets forth the shading system, as advanced above, except for the tensioner comprising a bottom bar. However, ***Saulters teaches*** using a bottom bar as a tensioner within a screen/shading system. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tensioner of Lindley, Jr. by incorporating a bottom bar, as taught by Saulters, in order to provide a tensioner that is detached from the building opening, thereby increasing the ease of removal of the shading system.

Claims 6, 12, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Lindley, Jr. in view of Davidson 5,839,237.***

As concerns claim 6, ***Lindley, Jr. sets forth*** the shading system, as advanced above, except for the securer comprising an elastic cord and hook. However, ***Davidson teaches*** incorporating elastic cords 2 and 4 and hooks upon a blocker for an overhead door. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the securer of Lindley, Jr. by incorporating

Art Unit: 3634

an elastic cord and hook, as taught by Davidson, in order to provide a securer that is detached from the building opening, thereby increasing the ease of removal of the shading system.

As concerns claim 12, **Lindley, Jr. sets forth** the shading system, as advanced above, except for the movement resister comprising a hook-and-loop retainer.

However, **Davidson teaches** incorporating hook-and-loop retainers along the edges of the screen blocker. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the movement resister of Lindley, Jr. by forming it as including hook-and-loop retainers, as taught by Davidson, in order to more easily removably attach the blocker to the opening and thereby more conveniently resist movement thereof.

As concerns claims 15-17, **Lindley, Jr. sets forth** the shading system, as advanced above, except for the access portal, blocker, and zipper. However, **Davidson teaches** incorporating an access portal, blocker, and zipper. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Lindley, Jr. by incorporating an access portal, blocker, and zipper, as taught by Davidson, in order to provide means to pass through the blocker during an emergency.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Lindley, Jr. in view of Japanese patent 191,689**.

Art Unit: 3634

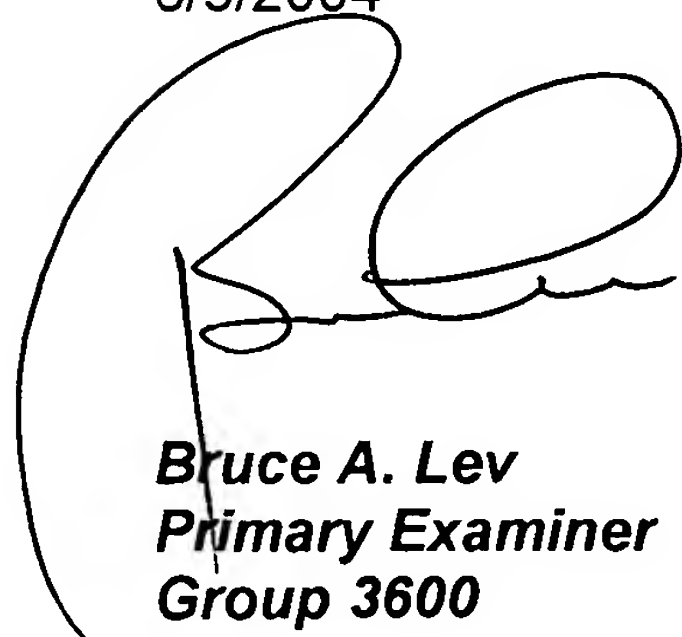
Lindley, Jr. sets forth the shading system, as advanced above, except for the movement resister comprising a magnetic retainer. However, **Japanese patent 191,689 teaches** incorporating a magnetic retainer as a movement resister. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the movement resister of Lindley, Jr. by forming it as including a magnetic retainer, as taught by Japanese patent 191,689, in order to more easily removably attach the blocker to the opening and thereby more conveniently resist movement thereof.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

6/9/2004



Bruce A. Lev
Primary Examiner
Group 3600